

REFERENCE TITLE: aggravated DUI

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2356

Introduced by
Representative Farnsworth

AN ACT

AMENDING SECTION 28-1383, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 307, SECTION 6; REPEALING SECTION 28-1383, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 4; AMENDING SECTION 28-3319, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 12; BLENDING MULTIPLE ENACTMENTS; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 28-1383, Arizona Revised Statutes, as amended by
3 Laws 2005, chapter 307, section 6, is amended to read:

4 28-1383. **Aggravated driving or actual physical control while**
5 **under the influence: violation: classification:**
6 **definition**

7 A. A person is guilty of aggravated driving or actual physical control
8 while under the influence of intoxicating liquor or drugs if the person does
9 any of the following:

10 1. Commits a violation of section 28-1381, section 28-1382 or this
11 section while the person's driver license or privilege to drive is suspended,
12 canceled, revoked or refused or while a restriction is placed on the person's
13 driver license or privilege to drive as a result of violating section 28-1381
14 or 28-1382 or under section 28-1385.

15 2. Within a period of sixty months commits a third or subsequent
16 violation of section 28-1381, section 28-1382 or this section or is convicted
17 of a violation of section 28-1381, section 28-1382 or this section and has
18 previously been convicted of any combination of convictions of section
19 28-1381, section 28-1382 or this section or acts in another jurisdiction that
20 if committed in this state would be a violation of section 28-1381, section
21 28-1382 or this section.

22 3. While a person under fifteen years of age is in the vehicle,
23 commits a violation of either:

- 24 (a) Section 28-1381.
25 (b) Section 28-1382.

26 4. WHILE THE PERSON IS ORDERED BY THE COURT OR REQUIRED PURSUANT TO
27 SECTION 28-3319 BY THE DEPARTMENT TO EQUIP ANY MOTOR VEHICLE THE PERSON
28 OPERATES WITH A CERTIFIED IGNITION INTERLOCK DEVICE, DOES EITHER OF THE
29 FOLLOWING:

30 (a) WHILE UNDER ARREST REFUSES TO SUBMIT TO ANY TEST CHOSEN BY A LAW
31 ENFORCEMENT OFFICER PURSUANT TO SECTION 28-1321, SUBSECTION A.

32 (b) COMMITS A VIOLATION OF SECTION 28-1381, SECTION 28-1382 OR THIS
33 SECTION.

34 B. The dates of the commission of the offenses are the determining
35 factor in applying the sixty month provision provided in subsection A,
36 paragraph 2 of this section regardless of the sequence in which the offenses
37 were committed. For the purposes of this section, a third or subsequent
38 violation for which a conviction occurs does not include a conviction for an
39 offense arising out of the same series of acts.

40 C. The notice to a person of the suspension, cancellation, revocation
41 or refusal of a driver license or privilege to drive is effective as provided
42 in section 28-3318 or pursuant to the laws of the state issuing the license.

43 D. A person is not eligible for probation, pardon, commutation or
44 suspension of sentence or release on any other basis until the person has

1 served not less than four months in prison if the person is convicted under
2 either of the following:

3 1. Subsection A, paragraph 1 of this section.
4 2. Subsection A, paragraph 2 of this section and within a sixty month
5 period has been convicted of two prior violations of section 28-1381, section
6 28-1382 or this section, or any combination of those sections, or acts in
7 another jurisdiction that if committed in this state would be a violation of
8 section 28-1381, section 28-1382 or this section.

9 E. A person who is convicted under subsection A, paragraph 2 of this
10 section and who within a sixty month period has been convicted of three or
11 more prior violations of section 28-1381, section 28-1382 or this section, or
12 any combination of those sections, or acts in another jurisdiction that if
13 committed in this state would be a violation of section 28-1381, section
14 28-1382 or this section is not eligible for probation, pardon, commutation or
15 suspension of sentence or release on any other basis until the person has
16 served not less than eight months in prison.

17 F. ~~In addition to any other penalty provided by law,~~ A person who is
18 convicted under subsection A, paragraph 3, subdivision (a) of this section
19 shall ~~be sentenced to~~ SERVE at least the minimum sentence TERM OF
20 INCARCERATION required pursuant to section 28-1381. ~~, except that if a~~
21 ~~person has been convicted of at least two prior violations of section~~
22 ~~28-1381, section 28-1382 or this section, or any combination of those~~
23 ~~sections, or convicted of at least two prior acts in another jurisdiction~~
24 ~~that if committed in this state would be violations of section 28-1381,~~
25 ~~section 28-1382 or this section, or any combination of those sections, within~~
26 ~~a sixty month period, the person shall be sentenced to serve at least the~~
27 ~~minimum sentence required pursuant to this section.~~

28 G. ~~In addition to any other penalty provided by law,~~ A person who is
29 convicted under subsection A, paragraph 3, subdivision (b) of this section
30 shall ~~be sentenced to~~ SERVE at least the minimum sentence TERM OF
31 INCARCERATION required pursuant to section 28-1382. ~~, except that if a~~
32 ~~person has been convicted of at least two prior violations of section~~
33 ~~28-1381, section 28-1382 or this section, or any combination of those~~
34 ~~sections, or convicted of at least two prior acts in another jurisdiction~~
35 ~~that if committed in this state would be a violation of section 28-1381,~~
36 ~~section 28-1382 or this section, or any combination of those sections, within~~
37 ~~a sixty month period, the person shall be sentenced to serve at least the~~
38 ~~minimum sentence required pursuant to this section.~~

39 H. A person who is convicted of a violation of this section shall
40 attend and complete alcohol or other drug screening, education or treatment
41 from an approved facility. If the person fails to comply with this
42 subsection and is placed on probation, in addition to the provisions of
43 section 13-901 the court may order that the person be incarcerated as a term
44 of probation as follows:

1 1. For a person sentenced pursuant to subsection D of this section,
2 for an individual period of not more than four months and a total period of
3 not more than one year.

4 2. For a person sentenced pursuant to subsection E of this section,
5 for an individual period of not more than eight months and a total period of
6 not more than two years.

7 I. The time that a person spends in custody pursuant to subsection H
8 of this section shall not be counted towards the sentence imposed if the
9 person's probation is revoked and the person is sentenced to prison after
10 revocation of probation.

11 J. **ON A CONVICTION FOR A VIOLATION OF THIS SECTION**, the court:

12 1. Shall report the conviction to the department. On receipt of the
13 report, the department shall revoke the driving privilege of the person. The
14 department shall not issue the person a new driver license within three years
15 of the date of the conviction and, for a conviction of a violation of
16 subsection A, paragraph 1, ~~or~~ 2 OR 4 or paragraph 3, subdivision (b) of this
17 section, shall require the person to equip any motor vehicle the person
18 operates with a certified ignition interlock device pursuant to section
19 28-3319. In addition, the court may order the person to equip any motor
20 vehicle the person operates with a certified ignition interlock device for
21 more than twelve months beginning on the date of reinstatement of the
22 person's driving privilege following a suspension or revocation or on the
23 date of the department's receipt of the report of conviction, whichever
24 occurs later. The person who operates a motor vehicle with a certified
25 ignition interlock device under this paragraph shall comply with article 5 of
26 this chapter.

27 2. In addition to any other penalty prescribed by law, shall order the
28 person to pay an additional assessment of two hundred fifty dollars. If the
29 conviction occurred in the superior court or a justice court, the court shall
30 transmit the monies received pursuant to this paragraph to the county
31 treasurer. If the conviction occurred in a municipal court, the court shall
32 transmit the monies received pursuant to this paragraph to the city
33 treasurer. The city or county treasurer shall transmit the monies received
34 to the state treasurer. The state treasurer shall deposit the monies
35 received in the driving under the influence abatement fund established by
36 section 28-1304. Any fine imposed for a violation of this section and any
37 assessments, restitution and incarceration costs shall be paid before the
38 assessment prescribed in this paragraph.

39 3. Shall order the person to pay a fine of not less than seven hundred
40 fifty dollars.

41 4. In addition to any other penalty prescribed by law, shall order the
42 person to pay an additional assessment of one thousand five hundred dollars
43 to be deposited by the state treasurer in the prison construction and
44 operations fund established by section 41-1651. This assessment is not
45 subject to any surcharge. If the conviction occurred in the superior court

1 or a justice court, the court shall transmit the assessed monies to the
2 county treasurer. If the conviction occurred in a municipal court, the court
3 shall transmit the assessed monies to the city treasurer. The city or county
4 treasurer shall transmit the monies received to the state treasurer.

5 5. In addition to any other penalty prescribed by law, shall order the
6 person to pay an additional assessment of one thousand five hundred dollars
7 to be deposited by the state treasurer in the state general fund. This
8 assessment is not subject to any surcharge. If the conviction occurred in
9 the superior court or a justice court, the court shall transmit the assessed
10 monies to the county treasurer. If the conviction occurred in a municipal
11 court, the court shall transmit the assessed monies to the city treasurer.
12 The city or county treasurer shall transmit the monies received to the state
13 treasurer.

14 K. AFTER COMPLETING THE PERIOD OF SUSPENSION REQUIRED BY SECTION
15 28-1385, A PERSON WHOSE DRIVING PRIVILEGE IS REVOKED FOR A VIOLATION OF
16 SUBSECTION A, PARAGRAPH 3 OF THIS SECTION MAY APPLY TO THE DEPARTMENT FOR A
17 SPECIAL IGNITION INTERLOCK RESTRICTED DRIVER LICENSE PURSUANT TO SECTION
18 28-1401.

19 ~~K.~~ L. Aggravated driving or actual physical control while under the
20 influence of intoxicating liquor or drugs committed under:

21 1. Subsection A, paragraph 1 or 2 OR PARAGRAPH 4, SUBDIVISION (b) of
22 this section is a class 4 felony.

23 2. Subsection A, paragraph 3 OR PARAGRAPH 4, SUBDIVISION (a) of this
24 section is a class 6 felony.

25 ~~L.~~ M. For the purposes of this section, "suspension, cancellation,
26 revocation or refusal" means any suspension, cancellation, revocation or
27 refusal.

28 Sec. 2. Repeal

29 Section 28-1383, Arizona Revised Statutes, as amended by Laws 2005,
30 chapter 312, section 4, is repealed.

31 Sec. 3. Section 28-3319, Arizona Revised Statutes, as amended by Laws
32 2005, chapter 312, section 12, is amended to read:

33 33 28-3319. Action after license suspension, revocation or denial
34 for driving under the influence or refusal of test;
35 ignition interlock device requirement; definition

36 A. If pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
37 or 28-3322 the license of a driver or the driving privilege of a nonresident
38 is suspended or revoked, the department shall not terminate the suspension or
39 revocation or issue a special ignition interlock restricted driver license,
40 if applicable, pursuant to chapter 4, article 3.1 of this title until the
41 person provides proof of financial responsibility pursuant to chapter 9,
42 article 3 of this title.

43 B. If pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
44 or 28-3322, an unlicensed resident is denied a license or permit to operate a
45 motor vehicle, the department shall not issue a license or permit until the

1 person provides proof of financial responsibility pursuant to chapter 9,
2 article 3 of this title.

3 C. If a person whose license or driving privilege is suspended or
4 revoked pursuant to section 28-1321, 28-1381, 28-1382 or 28-1383 is ordered,
5 pursuant to section 28-1381, 28-1382 or 28-1383, to attend alcohol or other
6 drug screening, education or treatment, the department shall not either:

7 1. Terminate the suspension or issue a special ignition interlock
8 restricted driver license, if applicable, pursuant to chapter 4, article 3.1
9 of this title until the person provides proof from the treatment facility
10 that the person has completed or is participating satisfactorily in alcohol
11 or other drug screening, education or treatment.

12 2. Issue a new license or a special ignition interlock restricted
13 driver license, if applicable, pursuant to chapter 4, article 3.1 of this
14 title to operate a motor vehicle after the revocation until the person
15 provides proof from the facility that the person has completed the court
16 ordered program.

17 D. On receipt of a report of conviction from a court, the department
18 shall require any motor vehicle the convicted person operates to be equipped
19 with a functioning certified ignition interlock device and the convicted
20 person to meet the requirements prescribed in section 28-1461 for twelve
21 months if any of the following applies:

22 1. The department determines that within a period of sixty months a
23 person is convicted of a second or subsequent violation of section 28-1381
24 with a prior conviction of a violation of section 28-1381 or 28-1382 or an
25 act in another jurisdiction that if committed in this state would be a
26 violation of section 28-1381 or 28-1382.

27 2. The conviction is for a violation of section 28-1382.

28 3. The conviction is for a violation of section 28-1383, subsection A,
29 paragraph 1, ~~or~~ 2 OR 4 or paragraph 3, subdivision (b).

30 E. The twelve month period prescribed in subsection D of this section
31 begins on the date of reinstatement of the person's driving privilege
32 following a suspension or revocation or on the date of the department's
33 receipt of the report of conviction, whichever occurs later.

34 F. A person who is required to equip a motor vehicle with a certified
35 ignition interlock device pursuant to subsection D of this section shall
36 comply with chapter 4, article 5 of this title.

37 G. For the purposes of this section, "certified ignition interlock
38 device" has the same meaning prescribed in section 28-1301.